IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 255 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ

Versus

LAXMIDAS VASRAM

Appearance:

MR KG SHETH, APP for Appellant

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 10/04/2002

ORAL JUDGEMENT

1. In this appeal under Section 378 of Cr.P.C., the State of Gujarat has challenged the judgment and order dated 6th November, 1993 passed by the learned JMFC, Keshod in Criminal Case No.486/85, acquitting the respondents no.1 and 2 of the offences under Sections

326, 323, 504 read with Section 114 of the I.P.C.

2. The charge against the respondents was that on 3rd June, 1985 at about 7.30 in the morning, the respondent no.1 gave a spade blow on the head of the complainant Karman Laxmidas and the respondent no.2 gave kicks and blows to him. The incident was alleged to have occurred on the way near the boundary of the vadi of respondent no.1 in village Ajaab, District Junagadh.

3. In order to bring home the charge to the respondents, the prosecution examined the complainant Karmanbhai Laxmidas (P.W.1), Vallabh Ramji (P.W.3), Dr. Kantilal Narsibhai Bhut (P.W.6) and several other witnesses. The evidence of Dr. Kantilal Bhut shows that he had examined the complainant at 8.30 in the morning on 3rd June, 1985 and he had found

(i) A lacerated wound over the left side of head over the parietal region
(ii) A lacerated wound over the upper and outer part of the left cheek
(iii) A lacerated wound over the left thigh and
(iv) swelling with abrasion over the left shoulder joint

The complainant was treated as an outdoor patient and after treatment, he was discharged.

4. According to Vallabh Ramji (P.W.3), on hearing shouts, he went to the scene of the incident and he found Karmanbhai lying down with a bleeding injury. He saw respondent no.1 armed with a blade. According to him, he intervened to save Karmanbhai. He had not seen what the respondent no.2 had done.

5. The learned Magistrate observed that there was no evidence to the effect that the complainant was in severe bodily pain or unable to pursue his ordinary pursuits for a space not less than 20 days following the injury and hence, it could not be said that he had suffered grievous hurt. He also referred to the evidence to the effect that there were previous civil disputes between the parties and after noting certain contradictions in the evidence, he came to the conclusion that in the circumstances of the case, since the evidence of the complainant was not corroborated by the evidence of any independent witness, there was reasonable doubt as to whether the accused had committed any criminal act. He, therefore, gave benefit of the doubt to the respondents and acquitted them. He also observed that there was

delay in filing the complaint.

6. Now, as far as respondent no.1 is concerned, the reasons given by the learned Magistrate for acquitting him do not appear to be reasonable. However, after the appeal was admitted, on 27th January, 1995, an order was passed to the effect that the appeal against him stood abated since he had died. As far as respondent no.2 is concerned, the only allegation against him is that he had given kick blows and in the circumstances of the case, the learned Magistrate rightly gave benefit of the doubt to him and it cannot be said that the view taken by the learned Magistrate, as far as respondent no.2 is concerned, is not reasonable and not possible. In the circumstances, there is no reason to interfere with the order of acquittal of respondent no.2. The appeal, therefore, fails and is dismissed.

(M.C. Patel, J)

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